

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE: LOWER MANHATTAN DISASTER
SITE LITIGATION

21 MC 102 (AKH)

ECF Cases

EUGENE JASTRZEBOWSKI, MARIAN
RETELSKI, AND NOEL VELEZ,

Civil Action Nos. 06cv05289

10cv06868

Plaintiffs,

10cv06869

v.

CITY OF NEW YORK, et al.,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION TO DISMISS CITY
DEFENDANTS FROM PLAINTIFFS' COMPLAINTS**

James E. Tyrrell, Jr.
Joseph E. Hopkins
PATTON BOGGS LLP
1185 Avenue of the Americas
New York, New York 10036

-and-

The Legal Center
One Riverfront Plaza, 6th Floor
Newark, New Jersey 07102
Tel: (973) 848-5600
Fax: (973) 848-5601
Attorneys for Defendants

On the Brief: Alyson Villano, Esq.

This joint motion is brought by Plaintiffs Eugeniusz Jastrzebowski, Marian Retelski, and Noel Velez (“Plaintiffs”) together with Defendants the City of New York, Board of Education of the City of New York, the Department of Business Services, the Department of Education of the City of New York and the New York City School Construction Authority (collectively, the “City Defendants”) who respectfully submit this Memorandum of Law in Support of their Joint Motion to Dismiss Plaintiffs’ Claims **against City Defendants only**.

ARGUMENT

After thorough and detailed arms-length settlement negotiations, Plaintiffs and the City Defendants’ Insurer, the WTC Captive Insurance Company, Inc. (“WTC Captive”), have agreed to settle the claims brought by Plaintiffs Jastrzebowski, Retelski, and Velez **against the City Defendants only**. These cases were settled on an individual basis by sophisticated counsel with experience in both litigating these claims and negotiating settlements. The parties have finalized the settlement documents and the WTC Captive has wired payments to Plaintiffs’ Counsel pursuant to the terms of those confidential settlement agreements. While Plaintiffs have settled their claims against the City Defendants, they wish to continue to litigate their claims against the remaining defendants in each of their individual actions. Therefore, pursuant to the direction of the Court and Fed. R. Civ. P. 41(a)(2), counsel for Plaintiffs and counsel for the City Defendants jointly submit this motion to **dismiss only the City Defendants** from Plaintiffs’ complaints with prejudice.

CONCLUSION

For all the foregoing reasons, Plaintiffs and the City Defendants respectfully request that the Court grant their motion to dismiss the City Defendants from Plaintiffs' complaints with prejudice.

Dated: November 28, 2012

/s/ James E. Tyrrell, Jr.
James E. Tyrrell, Jr. (JT 6837)
PATTON BOGGS LLP
1185 Avenue of the Americas
New York, New York 10036
(212) 246-5100
-and-
One Riverfront Plaza, 6th Floor
Newark, New Jersey 07102
(973) 848-5600
Attorneys for City Defendants

-and-

/s/ Robert A. Grochow
Robert A. Grochow, P.C. (RG1890)
Gregory Cannata & Associates
233 Broadway, Floor 5
New York, NY 10279
212-553-9205
Attorney for Plaintiffs